

§ 2807.21

appurtenant communication facilities. BLM must issue a decision within 6 months after it receives your complete application. BLM may include the same terms and conditions in the new grant as were in the original grant as to annual rent, duration, and nature of interest if:

- (1) These terms are in the public interest;
- (2) The lands are of approximately equal value; and
- (3) The lands involved are not within an incorporated community.

§ 2807.21 May I assign my grant?

(a) With BLM's approval, you may assign, in whole or in part, any right or interest in a grant.

(b) In order to assign a grant, the proposed assignee must file an application and satisfy the same procedures and standards as for a new grant, including paying processing fees (see subpart 2804 of this part).

(c) The assignment application must also include:

(1) Documentation that the assignor agrees to the assignment; and

(2) A signed statement that the proposed assignee agrees to comply with and be bound by the terms and conditions of the grant that is being assigned and all applicable laws and regulations.

(d) BLM will not recognize an assignment until it approves it in writing. BLM will approve the assignment if doing so is in the public interest. BLM may modify the grant or add bonding and other requirements, including additional terms and conditions, to the grant when approving the assignment. BLM may decrease rents if the new holder qualifies for an exemption (see § 2806.14 of this part), or waiver or reduction (see § 2806.15 of this part) and the previous holder did not. Similarly, BLM may increase rents if the previous holder qualified for an exemption or waiver or reduction and the new holder does not. If BLM approves the assignment, the benefits and liabilities of the grant apply to the new grant holder.

(e) The processing time and conditions described at § 2804.25(c) of this part apply to assignment applications.

43 CFR Ch. II (10-1-09 Edition)**§ 2807.22 How do I renew my grant?**

(a) If your grant specifies that it is renewable, and you choose to renew it, you must apply to BLM to renew the grant at least 120 calendar days before your grant expires. BLM will renew the grant if you are complying with the terms, conditions, and stipulations of the grant and applicable laws and regulations.

(b) If your grant does not address whether it is renewable, you may apply to BLM to renew the grant. You must send BLM your application at least 120 calendar days before your grant expires. In your application you must show that you are complying with the terms, conditions, and stipulations of the grant and applicable laws and regulations. BLM has the discretion to renew the grant if doing so is in the public interest.

(c) Submit your application under paragraph (a) or (b) of this section and include the same information necessary for a new application (see subpart 2804 of this part). You must reimburse BLM in advance for the administrative costs of processing the renewal in accordance with § 2804.14 of this part.

(d) BLM will review your application and determine the applicable terms and conditions of any renewed grant.

(e) BLM will not renew grants issued before October 21, 1976. If you hold such a grant and would like to continue to use the right-of-way beyond your grant's expiration date, you must apply to BLM for a new FLPMA grant (see subpart 2804 of this part). You must send BLM your application at least 120 calendar days before your grant expires.

(f) If BLM denies your application, you may appeal the decision under § 2801.10 of this part.

Subpart 2808—Trespass**§ 2808.10 What is trespass?**

(a) Trespass is using, occupying, or developing the public lands or their resources without a required authorization or in a way that is beyond the scope and terms and conditions of your authorization. Trespass is a prohibited act.

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(b) Trespass includes acts or omissions causing unnecessary or undue degradation to the public lands or their resources. In determining whether such degradation is occurring, BLM may consider the effects of the activity on resources and land uses outside the area of the activity.

(c) There are two kinds of trespass, willful and non-willful.

(1) *Willful trespass* is voluntary or conscious trespass and includes trespass committed with criminal or malicious intent. It includes a consistent pattern of actions taken with knowledge, even if those actions are taken in the belief that the conduct is reasonable or legal.

(2) *Non-willful trespass* is trespass committed by mistake or inadvertence.

§ 2808.11 What will BLM do if it determines that I am in trespass?

(a) BLM will notify you in writing of the trespass and explain your liability. Your liability includes:

(1) Reimbursing the United States for all costs incurred in investigating and terminating the trespass;

(2) Paying the rental for the lands, as provided for in subpart 2806 of this part, for the current and past years of trespass, or, where applicable, the cumulative value of the current use fee, amortization fee, and maintenance fee for unauthorized use of any BLM-administered road; and

(3) Rehabilitating and restoring any damaged lands or resources. If you do not rehabilitate and restore the lands and resources within the time set by BLM in the notice, you will be liable for the costs the United States incurs in rehabilitating and restoring the lands and resources.

(b) In addition to amounts you owe under paragraph (a) of this section, BLM may assess penalties as follows:

(1) For willful or repeated non-willful trespass, the penalty is two times the rent. For roads, the penalty is two times the charges for road use, amortization, and maintenance which have accrued since the trespass began.

(2) For non-willful trespass not resolved within 30 calendar days after re-

ceiving the written notice under paragraph (a) of this section, the penalty is an amount equal to the rent. To resolve the trespass you must meet one of the conditions identified in 43 CFR 9239.7-1. For roads, the penalty is an amount equal to the charges for road use, amortization, and maintenance which have accrued since the trespass began.

(c) The penalty will not be less than the fee for a Processing Category 2 application (see § 2804.14 of this part) for non-willful trespass or less than three times this amount for willful or repeated non-willful trespass. You must pay whichever is the higher of:

(1) The amount computed in paragraph (b) of this section; or

(2) The minimum penalty amount in paragraph (c) of this section.

(d) In addition to civil penalties under paragraph (b) of this section, you may be tried before a United States magistrate judge and fined no more than \$1,000 or imprisoned for no more than 12 months, or both, for a knowing and willful trespass, as provided at 43 CFR 9262.1 and 43 U.S.C. 1733(a).

(e) Until you comply with the requirements of 43 CFR 9239.7-1, BLM will not process any of your applications for any activities on BLM lands.

(f) You may appeal a trespass decision under § 2801.10 of this part.

(g) Nothing in this section limits your liability under any other Federal or state law.

§ 2808.12 May I receive a grant if I am or have been in trespass?

Until you satisfy your liability for a trespass, BLM will not process any applications you have pending for any activity on BLM-administered lands. A history of trespass will not necessarily disqualify you from receiving a grant. In order to correct a trespass, you must apply under the procedures described at subpart 2804 of this part. BLM will process your application as if it were a new use. Prior unauthorized use does not create a preference for receiving a grant.